

# HR Tool Box

State  
of  
Vermont

Department  
of  
Human  
Resources

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## From the Commissioner - David K. Herlihy

### Whistleblower Legislation

The State of Vermont has long been committed to providing special protection to state employees who make allegations of impropriety or inefficiency in state government. Such employees are commonly referred to as “whistleblowers.” Many years ago the State negotiated a contract provision to prohibit discrimination against employees making such allegations. Act 128 of this past legislative session established statutory protection for whistleblowers. In addition, the legislation creates protections for an employee who refuses to obey an illegal order and addresses some issues relating to communications between state employees and members of the General Assembly. The new law will be found at 3 V.S.A. §§ 971-978.

Before turning to a summary of the mechanics of the new legislation, we should cover the provision of most immediate concern to our HR administrators. 3 V.S.A. § 377 requires each agency or department to distribute a copy of this law by August 1, 2008, and to post a notice about the law in a prominent place in the workplace. The text of the law can be found at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT128.HTM>. It should be printed and posted on your workplace bulletin boards along with other required postings.

The law provides protection by prohibiting retaliatory action against an employee who refuses to comply with an illegal order or who makes a good faith report to a public body of illegal conduct, or of fraud, waste, or abuse of authority, or a threat to the health of employees, the public, or people under the care of the state. The definition of “public body” is limited to specific governmental authorities who have responsibility and the duty to respond to reports of inefficiency or wrongdoing. Specifically, “public body” refers to agency heads (or designees), a Board or Commission, the Auditor, a state or federal agency that oversees activities of a state agency (e.g., the Federal Highway Administration oversees AOT), a law enforcement officer or prosecutor, or the General Assembly or U.S. Congress. Prohibited retaliatory actions include adverse performance or disciplinary action, denial of promotion, imposition of a warning period, or involuntary transfer or reassignment.

As mentioned earlier, the law also touches on communications with the General Assembly. Management is forbidden from requiring state employees to discuss testimony that an employee has given (or intends to give), *when the employee is not testifying on behalf of state government*. In other words, management cannot delve into an employee’s *personal* testimony, but does have the right to go over testimony that is to be provided in the course of the employee’s duties. In addition, the law prohibits state government from interfering with an employee’s right to communicate with the general assembly as a private citizen. However, that is subject to some common-sense limitations. For instance, the employee must be clear that his or her testimony is not on behalf of state government, and the protections do not cover testimony to the General Assembly that constitutes hate speech or threats of violence. The thought behind the hate speech limitation was that an employee could seriously impede his or her ability to fulfill job responsibilities by making inappropriate statements about protected groups who might be served in the performance of duties. The legislation also addresses a very practical issue that might arise when an employee goes to the General Assembly – the employee’s absence from work. Employees must request permission to be absent. Permission should be granted unless there is “good cause” to deny a request; if denied, the reason for denial must be put in writing and given to the employee *in advance of the scheduled appearance*.

### Whistleblower continued...

The law specifies that an employee may file a grievance or bring a claim in court, but cannot do both, and creates a six-month statute of limitations for filing a claim in court. The stakes may be high for a department that runs afoul of the law because, if an employee files in court instead of the VLRB, in addition to all the normal damages that are available, there will be the potential for additional damages and attorney's fees.

So, in addition to the requirement to post the law, what does this mean for the HR Administrator? For one, when you are involved with an adverse action against an employee who may qualify for the protections of the law, you need to be mindful of this additional issue and must bring it to the attention of anyone you may be working with from the Labor Relations Division or DHR's legal team. Second, during the legislative session, you are going to have to be ready to work with management to provide a written reason to justify the denial of a request for time off to attend the General Assembly. DHR will be working these new provisions into its annual guidance on employee communications with the Legislature. Third, you will need to be ready to work with management to respond to a refusal to follow an order based on a claim that it is illegal. Of course, DHR will be available to work with you on those issues, which are likely to be fairly complex. Finally, you should work with management to strive for an environment in your department in which retaliation for responsible disagreement is not tolerated.

The new law provides much more detailed guidance for the state, but in reality, the basic obligations of the law are not new. Nevertheless, we plan to continue to provide training and guidance on these issues, which are sure to be more prominent in the state workplace.

## Benefits Corner

	Employee Leave Status in HCM (navigation Workforce Admin > Job Data)						
Benefit Plans	LOA	LOA	LOA	LOA	LOA	LOA	LOA
	ADM	EDU	PTD	SAB	HEA	FML	MIL
	Unpaid Admin	Unpaid Educat	Unpaid Partial/Total Disability	Unpaid Sabbatic	Unpaid Medical	Unpaid FMLA	Unpaid Military
<b>Medical Insurance</b>							
Employee Cost Share	100%	100%	20%	100%	20%	20%	20%
Maximum Coverage Period	1 year	1 year	1st 12 months	1 year	1st 12 months	12 or 16 wks	-
<i>Comments: 1) Employee must complete LOA enrollment form to retain medical coverage 2) The employee cost share is billed and due on a bi-weekly basis in synch with payroll 3) If LOA is FMLA, please specify in comments on HCM record its length (i.e., 12 weeks)</i>							
<b>Dental Assistance Plan</b>							
Employee Cost Share	None						
Maximum Coverage Period	8 weeks	8 weeks	8 weeks	8 weeks	8 weeks	12 or 16 wks	8 weeks
<i>Comments: When the Benefits Unit receives the unpaid LOA report, a future dated termination record is entered according to the type of leave and maximum coverage period. The RFL is the trigger to reinstate previously elected coverage. Untimely RFL's may result in cancellation of or a lapse in dental coverage.</i>							
<b>Life Insurance</b>							
Employee Cost Share	None						
Maximum Coverage Period	1 month	1 month	1 month	1 month	1 year	12 or 16 wks	1 year
<i>Comments: When the Benefits Unit receives the unpaid LOA report, a future dated termination record is entered according to the type of leave and maximum coverage period. The RFL is the trigger to reinstate previously elected coverage. Untimely RFL's may result in a cancellation of life insurance.</i>							
<b>Other Notes:</b>							
<b>*** Employees who are in original probation may not be eligible for any type of unpaid leave. If an employee in original probation does go on unpaid leave they could be responsible for 100% of the cost of health insurance. Please contact Labor Relations. ***</b>							

# Labor Relations

## **MILITARY LEAVE -- NEW and OLD PROVISIONS:**

Section 1(g) of the Military Leave article of the contract states,

**"... A permanent status or limited status classified employee who has more than fifteen (15) days of authorized military duty scheduled in one Federal Training Year shall not be entitled to leave with pay for those days in excess of fifteen (15), and shall be placed in an off payroll status or leave of absence status, unless he or she elects to use accumulated annual, personal, or compensatory time leave credits for the period of absence."**

This means that employees are required to use ALL of their PAID military leave entitlement before they can go off payroll (or unpaid leave of absence), or use some other form(s) of accrued leave, to cover an absence due to authorized military service. This becomes effective 7/1/08.

Remember that as of July 1, the PAID military leave entitlement increases from 11 days, to 15 days.

Now that the new FY 2009-2010 contract authorizes the use of paid military leave for regular National Guard or Reserve drills, you will need to remind supervisors and managers that the contract now requires the use of any paid military leave entitlement for attendance at drills, before an employee is allowed to go off payroll or use annual, comp, or personal leave to cover that absence.

Note: A day is a day, i.e., 15 days means fifteen of whatever the employee's workday happens to be, not just arbitrarily 8 hours per day.

Also, please remember that once the PAID military leave entitlement (15 days) is exhausted, federal law allows employees on military leave to use annual, comp, or personal leave at the employee's discretion (or not), and whenever the employee chooses during the leave.

## **Town Meeting Leave Law**

The Legislature passed, and the Governor has signed a bill amending Vermont's Parental and Family Leave Law providing employees with the right to request leave for the purpose of attending a town meeting. The actual wording of the bill is: 21 V.S.A. § 472b is added to read:

### § 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

(a) Subject to the essential operation of a business or entity of state or local government, which shall prevail in any instance of conflict, an employee shall have the right to take unpaid leave from employment under this section or subsection 472(b) of this title for the purpose of attending his or her annual town meeting, provided the employee notifies the employer at least seven days prior to the date of the town meeting. An employer shall not discharge or in any other manner retaliate against an employee for exercising the right provided by this section.

(b) A student of voting age shall have the right to attend his or her annual town meeting, and the school shall not penalize or report the student as a truant for exercising the right provided by this section.

(c) The requirement of subsection (b) shall not apply to a student who is in state custody in a secure facility.

(d) The requirement of subsection (b) shall not create an obligation for any parent, guardian or custodian to take any affirmative action to enable the student to attend an annual town meeting.

Since Town Meeting Day is a designated holiday for State employees, it is not expected that this new law will have any appreciable effect on most departments/agencies. However, it may have an impact on a few departments that must maintain essential operations, even on holidays, such as law enforcement, corrections, institutions, etc. Under the provisions of this law:

- employees must request such leave at least seven calendar days in advance.
- only those employees who have been "... continuously employed by the same employer for a period of one year for an average of at least 30 hours per week." are eligible.
- the granting of such leave is subject to the essential operation of the department/agency, which shall prevail in any instance of conflict.
- not all town meetings occur on the designated State holiday. The term "annual town meeting" is not defined in the statute. However, it would appear that this law does NOT cover "special town meetings", but only the employee's annual town meeting.
- the leave would be unpaid unless the employee elects to use accrued sick leave, or vacation leave or any other accrued paid leave, not to exceed six weeks.

## What Can We Do For You?

### Division of Workforce Development and Wellness

#### Division Vision statement:

*The Workforce Development and Wellness Division engages state employee's and organizations in learning, skill-building, and awareness opportunities. We facilitate behavioral and cultural change to achieve healthy and effective worksites.*

Tracy D. Gallo, Division Director

#### Workforce Development Team:

Carole Bourneuf, Professional Development Coordinator  
Rose Gowdey, Consultant  
Matt Krauss, Consultant

The Workforce Development unit provides a variety of services to support workforce planning activities and the professional development of state employees. The Summit: Center for State Employee Development, is the statewide training facility. Programs offered by the Workforce Development Team through the Summit include: open enrollment courses; consulting services to agencies and departments; Supervisory and Leadership Development; a full conference facility; and models and tools (examples: Statewide Core Competencies; Professional Development planning tools; and much more!).

#### Wellness Team:

Maura O'Brien, Program Coordinator  
Dianne VanderBush, Program Assistant  
Marlene Poirier, Program Technician  
Sasha Kohnowich, Health Educator  
Essie Howe, Nurse Educator  
Marilyn Lindquist, Nurse Educator  
Annette "Boo" Smith, Nurse Educator  
Janet Waters, Nurse Educator

The Wellness unit provides comprehensive health promotion programming including: health risk appraisals; biometric screenings (ex: blood pressure, cholesterol); health coaching; annual activity and flu vaccination programs; and health related classes (ex: CPR/ First aid).

Find out more about the Workforce Development & Wellness programs at:

<http://www.vermontpersonnel.org/employee/training.php>

<http://www.vermontpersonnel.org/employee/wellness.php>

Save the Date!

July 22, 2008

1:00 – 4:00

HR Partners Meeting

Hazen's Notch

The Summit

Waterbury

### HR Partners' Meeting Agenda:

#### Track 1:

Session 1 – Drafting Stipulations of Agreements

Session 2 – ADA Refresher: Receipt/Response to Requests; Disabilities; & Permissible Questions

#### Track 2:

Leaves of Absence – Integration of Process

- Process Education
- Impact & Cost of Miscommunications
- Tools (i.e. Discoverer, Leave Desk Aid)
- HCM Navigation

## Updates from the Wellness Division

### Get Moving VT State Employees: Destination Health!

The VT State Employees' Wellness Program kicked off the 5<sup>th</sup> annual Activity Program on May 13<sup>th</sup> with Commissioner Herlihy introducing Governor Douglas as the main speaker. Unlike last year when it snowed, the day was bright and sunny. The activity program went on-line this year, partnering with the Department of Health's *Get Moving Vermont* program, and will be open to all Vermonters starting in July. With this tool, employees can participate year round and invite family and friends to join them.

Employees can register by going to [www.Getmoving.vermont.gov](http://www.Getmoving.vermont.gov). Almost 2000 employees are currently participating. We had our first raffle after two weeks and over 800 employees were eligible, having tracked activity for each of the first two weeks. The system has an extensive list of activities that can be converted. There are many additional features to encourage people to participate including testimonial pages, the ability to send e-cards, to create private routes using satellite technology, and to see where you and/or your worksite team is compared to everyone else.



Governor Douglas shows off his pedometer at the Activity Program kickoff. He then led the assembled group on a spirited walk around town.

### A Few Thoughts on Physical Activity: State Employees' Wellness Program.

When it comes to physical activity, it's important to remember that **it takes minimal effort to get major results**. To maintain health, the recommendation is 30 minutes of moderate intensity activity or exercise every day. To prevent weight gain, 60 minutes, to maintain weight loss, 60-90 minutes. For many of us, those numbers are daunting if not completely out of the realm of what we think possible. Take heart. I found the following facts to be encouraging that there is still hope for the rest of us.

- Activity can be accumulated in short bouts of 5-10 minutes.
- Accumulated time is more important than intensity.
- The greatest relative benefit will be for those individuals who have been previously inactive.
- Exercise reduces abdominal visceral fat **even if there is no or minimal change in body weight or body mass index (BMI)**. This type of fat is located under the abdominal muscles and has been associated with a higher risk for developing multiple diseases.
- Exercise increases healthy cholesterol and decreases triglycerides (a good thing!)
- Exercise reduces blood pressure in everyone (both systolic and diastolic).
- The benefit of exercise lasts long after the activity has ended.
- Exercise every other day at a minimum in order to avoid reversing the good effects.
- Join us for fun and activity through the summer and beyond!



Lorna Carty, HR Administrator, Tax Department leads a group of walkers for the Activity Program kickoff with Governor Douglas in Montpelier.

## The Department of Human Resources

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We're on the Web!  
*See us at:*

[www.vermontpersonnel.org](http://www.vermontpersonnel.org)



### HCM Data / Statewide Database

As previously communicated, on January 1, 2008, the Department of Human Resources stopped sending Human Capital Management (HCM) data to the State Wide Database. This was done to ensure that confidential employee data is being used and stored in a more controlled environment. To replace this information base, a Discoverer reporting tool was rolled out and work has been done with individual agencies on data extract feeds. As the final piece of the overall plan, the HCM data stored in the Statewide Database will be deleted. The rationale is that if this information is no longer current, employee data should not be left in an unsupported database.

A tentative date of July 31, 2008 has been set to complete the work. Please take a moment to pass this along to anyone you think might be affected by this decision, as it could significantly impact reporting capabilities. This action is not intended to cause hardship for anyone and we are certainly willing to work with individual agencies to ensure that everyone has the information necessary to conduct business. Any questions or concerns: please call the DHR helpdesk at 802.828.0407 option #1.